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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,800	10/31/2003	Jorg Bernard	G5005.0027	1152

32172 7590 10/15/2008  
DICKSTEIN SHAPIRO LLP  
1177 AVENUE OF THE AMERICAS (6TH AVENUE)  
NEW YORK, NY 10036-2714

EXAMINER
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BEKKER, KELLY JO

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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10/15/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/697,800	<b>Applicant(s)</b> BERNARD ET AL.	
	<b>Examiner</b> Kelly Bekker	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 30-50 and 61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30-50 and 61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

Amendments made 7/15/08 have been entered.  
Claims 30-50 and 61 are pending.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The 112 2<sup>nd</sup> paragraph rejection of claim 50 due to the use of improper Markush-type language has been withdrawn in light of applicant's amendments made July 15, 2008.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 30-35, 38-42, 44-47, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barrett et al. (US 6531174 B2) in view of Takazoe et al. (US 4556429) or Koji et al. (JP 40119164A ). The references and rejection are incorporated herein and as cited in the office action mailed May 5, 2008.

Claims 36, 37, 43, 48, 50, and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barrett et al. (US 6531174 B2) in view of Takazoe et al. (US 4556429) or Koji et al. (JP 40119164A Abstract only), further in view of Willibald-Ettle et al. (US 6458400 B1). The references and rejection are incorporated herein and as cited in the office action mailed May 5, 2008.

***Response to Arguments***

Applicant's arguments filed July 15, 2008 have been fully considered but they are not persuasive.

Applicant argues that the references of record do not teach of a gelatin-free soft caramel containing isomaltulose. Applicant's argument is not convincing as Barrett teaches of a gelatin free soft caramel with sucrose and as Takazoe and Koji teach of

replacing all or a portion of sucrose in caramels with isomaltulose in order to aid in dental protection.

Applicant argues that there is no teaching or suggestion of combining crystalline isomaltulose with a non crystalline sweetener. Applicant's argument is not convincing as Barrett teaches of crystalline sweetener, such as sucrose, in combination with a non crystalline sweetener, such as maltitol (Column 4 lines 39-53); as Takazoe teaches of a crystalline sweetener with improved dental protection that is a combination isomaltulose, i.e. palatinose, and sucrose and that can be used in caramels (Abstract and Column 5 lines 3-10); as Koji teaches of a crystalline sweetener, isomaltulose has improved dental protection and is used to manufacture caramel in crystalline form with non crystalline sweeteners, such as sorbitol (page 4, Purpose of the Invention and page 6). Thus one would have been motivated to include crystalline isomaltulose in combination with sucrose as the crystalline sweetener, that was combined with the non crystalline sweetener composition, in the caramel composition as taught by Barrett in view of Takazoe or Koji in order to reduce cavities caused from the food product.

Applicant argues that one would not have a reasonable expectation of success when combining the references since isomaltulose is heat sensitive. Applicant's argument is not convincing as Takazoe teaches isomaltulose can be used in caramels (Abstract and Column 5 lines 3-10) and as Koji teaches crystalline isomaltulose is used to manufacture caramel, including the step of heating to around 120C (page 7). Thus, since both Takazoe and Koji teach that isomaltulose can be included in the production of caramel, one would have a reasonable expectation of success when including isomaltulose in the caramel composition as taught by Barrett.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Bekker whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/  
Primary Examiner  
Art Unit 1794

/Kelly Bekker/  
Examiner  
Art Unit 1794